

KROKIDAS & BLUESTEIN

ATTORNEYS

CLIENT ALERT

AMENDMENTS TO MASSACHUSETTS CHARTER SCHOOL REGULATIONS (603 C.M.R. 1.00)

The Department of Elementary and Secondary Education (“DESE”) recently issued revised Charter School regulations. The new regulations add important new provisions and clarify existing rules.

The following is an overview of the regulatory changes that may raise significant legal issues for charter school organizations. For the complete revised regulations, please visit <http://www.doe.mass.edu/lawsregs/603cmr1.html>. For any questions about these regulations or other charter school issues, please contact Attorney Elka Sachs (esachs@kb-law.com), Attorney Sheryl Howard (showard@kb-law.com) or Attorney Anjali Waikar (awaikar@kb-law.com).

Immediate Closure of Charter School Facilities

The new regulations empower the Commissioner of DESE (the “Commissioner”) to order the immediate closure of a charter school facility when the health, safety or education of the school’s students is at risk, or when fire, health or safety codes, regulations or laws, or accessibility requirements, are not met.

Applications for Charters

The revised regulations eliminate the requirement that all charter applications undergo a two-stage process with a prospectus followed by an application. However, pursuant to DESE guidelines for the 2014-15 charter application cycle, DESE will continue to use the two-stage process for new charter applicants, while a single-stage charter application process will be permitted only for applications submitted by the boards of trustees of existing charter schools. Pursuant to the revised regulations, every charter school applicant (whether a new applicant, or the board of trustees of an existing charter school) must send copies of their charter applications to the superintendents of the charter school’s enrolling districts.

Boards of Trustees

The new charter school regulations include several significant provisions relating to charter school governance and management. The regulations outline the basic role of and requirements for the Board of Trustees of a charter school, including the following:

- The school's Board shall have at least five members;
- The school's Board is a state governmental body;
- Trustees have fiduciary duties of loyalty and care;
- Trustees oversee the school's budget, but not its day-to-day operations;
- Trustees must ensure that the school complies with its charter, amendments and all applicable laws;
- The school's Board must ensure that the complaint and the opening procedures processes are followed, annual reports and annual audits are prepared and submitted, and an Accountability Plan, a Recruitment and Retention Plan, and other school plans and policies are developed and satisfied;
- The school's Board is responsible for personnel management, including hiring, evaluating and removing qualified administrators in order to meet school goals; and
- The school's Board is responsible for ensuring that all Trustees receive orientation and training for their role.

The new regulations also require that all charter school bylaws comply with applicable law and contain certain provisions, many of which were previously required by DESE guidance. The new regulations include the following additional requirements with respect to Boards of Trustees of charter schools:

- Reasonable term limits for Trustees;
- Due diligence in selecting members of the school's Board, especially with regard to skills and potential conflicts of interest;
- The school's Board meets at least quarterly, within Massachusetts;
- Compliance with the open meeting law at M.G.L. c. 30A;
- Compliance with ethics requirements, including training, disclosures under M.G.L. c. 268A, and financial interest statements under M.G.L. c. 71, § 89(u); and
- If school employees can serve on the Board, identification by position of the categories of employees who may serve as Trustees.

The new regulations require that every Trustee complete the required orientation and training within one year of appointment.

Please feel free to contact us if you would like help with developing or providing orientation and training with any new requirements.

Reporting Requirements and Ongoing Review

The new regulations include two important new reporting requirements:

1. Charter schools must notify DESE in writing of all “significant matters” (including any communications related to any government audit, or from any investigative or law enforcement agency) within two business days. The regulations do not define “significant matters” beyond citing the above investigations as examples; and
2. A charter school must notify DESE in writing immediately of any changes which “may have a significant impact on” the school’s “ability to fulfill its goals or mission,” including:
 - Changes in persons filling leadership positions such as Executive Director or Principal;
 - A delay in implementing an amendment of the school’s charter;
 - A change in the school’s location;
 - Changes in officers of the school’s Board of Trustees;
 - Resignations from the school’s Board of Trustees;
 - Changes in school or school’s Board of Trustees contact information; and
 - Any significant decrease in enrollment (more than 10% lower than any previously reported figure).

Please do not hesitate to contact us if you are concerned that your school might have experienced a significant matter which should be reported to DESE.

Conditions, Probation, Suspension, Revocation, and Non-renewal

The new regulations clarify the different tiers of discipline that the Commissioner of DESE may impose on a charter school.

- Conditions: The Massachusetts Board of Elementary and Secondary Education (“BESE”) or Commissioner may impose conditions on a school’s charter for the following reasons:
 - Violations of law;
 - Failure to make progress with student achievement;
 - Failure to adhere to and improve the school’s recruitment and retention plan;
 - Failure to comply with the school’s charter; and
 - Failure to remain viable.

- Probation: BESE may place a school on probation if imposing conditions would not remedy the problem. Probation indicates concern about the school's viability and permits BESE to suspend a school's charter if it does not immediately remedy the cause(s) of probation.

- Suspension or Revocation: BESE may suspend or revoke a charter for a variety of reasons including, without limitation, the following:
 - Lack of evidence of academic success;
 - Failure to comply with the school's charter or applicable laws and regulations;
 - A material misrepresentation in an application for charter approval or renewal;
 - Financial insolvency;
 - Any mishandling of funds entrusted to the school or its administrators;
 - Any fraud or mismanagement by the school's Board of Trustees or school administrators, including mismanagement of the educational program and any failure to provide a healthy and safe environment for students;
 - The criminal conviction of any member of the school's Board of Trustees or any administrator; and
 - Failure to fulfill any conditions imposed by BESE with regard to the grant or renewal of a charter.

Finally, the new regulations permit BESE to require a charter school on probation to establish an escrow account to pay for closing, legal and audit expenses should closure occur.

This Client Alert summarizes only certain key changes to the charter school regulations. For more information about the new charter school regulations, please do not hesitate to contact us.